

HARVARD LAW RECORD

America's Oldest Law School Newspaper

VOL. 66, NO. 4

© 1978 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

MARCH 3, 1978

TWENTY CENTS

Fear of Failing Unfounded, Says Upton to 3L's

By Charles Johnson

Fears of failing have sent more 3L's than usual into the registrar's office to inquire about grades, but the rumors which have sparked the outbreak of paranoia appear to have no foundation.

Registrar Mary D. Upton said this week her office has been besieged by more nervous students than she can remember in past years, but she thinks the influx is due to a proliferation of rumors, not failing grades.

"There are just more rumors," she said. "My impression is that there is nothing unusual in terms of numbers (of failing grades), but in terms of rumors there certainly is."

Most of the 3L's anxiety has centered around grades in Commercial Transactions, Estate Planning, Business Planning, and Corporate Tax, said Assistant Dean Stephen M. Bernardi. These courses have always prompted anxiety because of their difficulty, he added.

"You have a number of students who come out of those exams thinking, 'That was really hard; I hope I passed,'" he said.

And once students in the class hear that someone failed, the rumors start, said Bernardi. "It's as much a perception of the passing students as of the students who actually fail."

Failed Students Notified Early

Bernardi and Upton have tried to notify each student who has failed
(Continued on Page 13)

Bar Gives Mixed Reaction To Burger's Rap of Lawyers

By Larry Vilardo

Chief Justice Warren E. Burger is worried about the competence of America's trial lawyers.

In his recent comments at the annual midwinter meeting of the American Bar Association, Chief Justice Burger estimated that as many as half of the nation's trial attorneys are not qualified to appear in court. He noted that admission to the bar qualifies attorneys to try cases as much as graduation from medical school qualifies doctors to perform surgery.

"If this analogy irritates any significant part of our profession, I challenge their irritation," he said.

Burger soon received a challenge of his own from the Illinois State

Bar Association. Carole K. Bellows, president of the association, sponsored a resolution asking the Chief Justice to substantiate his figures, or to recant his criticism. The ABA voted down the Illinois resolution, but Bellows remains steadfast in her criticism of Burger's comments.

"I think that the thing that concerned our board and lawyers around the country is that lawyers have a poor enough reputation in this country without having it aggravated unjustifiably and undeservedly," she said. "What we did was by no means a criticism of the Chief Justice for saying what he said, but a challenge to him to substantiate his claim."

(Continued on Page 8)



A cast of thousands has been rehearsing for the premiere of this year's Law School show, "It Takes a Fief." The show opens on Thursday, March 9.

Kenneth Edelin, 15 Months Later

By Larry Zelenak

On December 17, 1976, the Supreme Judicial Court of Massachusetts overturned the manslaughter conviction of Dr. Kenneth Edelin, Chief Resident in obstetrics and gynecology at Boston City Hospital, in connection with the death of a fetus during an abortion he had performed on a 17-year-old unmarried woman in 1973. The Court held that there was insufficient evidence to submit to the jury the question of whether Edelin was guilty beyond a reasonable doubt of the wanton or reckless conduct required for manslaughter.

"... I found you can't depend on logic, truth, and what's right to win out."

Today Edelin remains on the staff of Boston City Hospital. "I thought of leaving BCH," he admits. "In fact, I thought of leaving Boston and Massachusetts. I decided to stay because I like the people here — the hospital staff, the young doctors with all their energy and enthusiasm, and the patients — especially the patients."

According to Edelin, virtually any doctor performing abortions could have been tried on charges similar to those in his case; he is uncertain as to why he was singled out. At the time of the abortion for which he was tried, there was considerable controversy over whether abortions should be permitted at City Hospital. The hospital was under the control of the Boston City Council, many of whose mem-

bers staunchly opposed abortion. Edelin argued that the hospital was a public, full-service facility, which people should be able to rely on for all their medical needs. As one of only two doctors at BCH willing to perform abortions, he found himself in the center of the controversy.

Can't Depend on Truth

There may also have been an element of racism in the choice of Edelin, a black, as defendant. "About the thinking of the people who brought the indictment, I don't know," Edelin says. "But some things the jurors said after the trial indicate racism may have influenced them. At any rate, the racial climate in Boston was very bad at the time."

His conclusion is that the indictment and prosecution were "not in good faith. Right-to-lifers were using the trial as a forum to express their views."

The guilty verdict was especially devastating to Edelin, because he was practically certain he would be acquitted. "I thought things were very much in our favor," he recalls. "But I found you can't depend on logic, truth, and what's right to win out. After that I wasn't sure of anything — certainly not of winning on appeal. I wasn't terribly optimistic we'd win in Massachusetts at any level. I thought the Supreme Court might rule in our favor, but that's a very long route, and they might decline to hear the case for want of a significant constitutional question."

Intangible Costs

Legal fees for the defense totalled \$138,000, most, but not all, of

which was paid for out of contributions to the Kenneth Edelin Defense Fund. But Edelin said there were many intangible costs to himself as well. "The trial created a natural association in people's minds between myself and abortion. My name became synonymous with abortion."

He feels that that association may have given many people a distorted picture of what he is trying to do: "I provide health care in obstetrics and gynecology. Abortion's a part of that, but it's *only* a part. I want to provide health care for people who have traditionally been without it for economic or geographic reasons."

"There was a lot of recognition for awhile, and it was difficult to live with."

Edelin purposely limits the size of his private practice, to leave time for his work on the staffs of both Boston City and Boston University Hospitals. He has noticed no major change in the demand for his services as a result of the publicity surrounding the trial. "I like to think," he remarks, "that if my practice does grow it will be because of the kind of doctor I am and the kind of service I give, rather than because of my notoriety."

Martyr Symbol

Another difficulty created by the trial was the tendency of people to react to him as a symbol — either a villain or a martyr — rather than as a human being, but Edelin finds that the problem is decreasing with time. "There was a lot of recognition for awhile, and it was difficult to live with," he relates. "But not once in my encounters with individuals — in stores, on the street, and so on — did anyone say any-

(Continued on Page 9)

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$2.80 semester, \$5.60 year mailed; \$8.00 year mailed outside U.S.; students \$3.00 year distributed at the Law School. Individual copies including back issues: 20 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1978 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$2.80 of his H.L.S.A. annual dues are used to purchase the Record subscription he receives. Dues paid at any time during the H.L.S.A. fiscal year which began in April 1977 and ends in March 1978 will purchase a subscription which begins in September 1977 and expires in August 1978, and so on in following years.

Socratic Method: Useful? Useless? Sadistic?

By Tammy Jacobs

"A basic question which most students ask themselves more or less repeatedly throughout the first year is: *Why am I taking this shit from them?* It is not the workload which is being challenged. It is the underlying relationship of teacher to student."

The Yale law student who wrote those comments nearly a decade ago is now a professor at Harvard. But the criticisms that Duncan Kennedy wrote in the *Yale Review of Law and Social Action* in 1970 are echoed, in a more mellow manner, by at least some students today. To others, the pros of the teaching methods used in law school outweigh the cons.

The segment from Kennedy's "How the Law School Fails: A Polemic" continues with more questions. "Is it acceptable at 22 or 23 or 24 to let oneself be publicly insulted, day after day, by another man no matter how brilliant? Is it acceptable to submerge oneself in a group which responds with Pavlovian consistency to suggestions you find degrading? Is it acceptable . . . to plunge oneself into an essentially paternalistic community where the route to success is to establish yourself firmly in the affections of powerful older men?"

While deep-felt criticisms of the technique loosely termed the "Socratic method" remain, a not-so-random sample of friends and ac-

quaintances willing to talk for the RECORD shows a surprisingly varied range of perceptions of just what is going on in class, especially first-year class.

Adversary Relationship

"When I first came here," says Lynne Delanty, now a 3L, "I was so shocked by the notion that the teaching method could be an adversary relationship. My professors had all been so supportive in college."

Not only the fear of looking foolish in front of professors, but the attitudes of other students, bothered Delanty.

"I think the adversary nature of the relationship stems partly from the other students — they're so ready to pounce on what you say," she adds. "It took me until second year to gain back confidence."

"I'd know I'd have something valid to say and I'd raise my hand and I'd feel my heart pounding. And I'd tell myself, 'you idiot! I can't believe they've got you like this!'"

Delanty says she still doesn't volunteer in large classes, although she speaks out in smaller groups.

One professor told Maura Ann McBreen, now also a 3L, that her comment was "immature," the first time she volunteered as a 1L. "I never spoke in that class again."

She said that by the end of first

year she had relaxed some. "It took a while before you could say, 'Look, I don't know the answer,' or make a mistake and not feel like a fool in everybody's eyes."

Sit Back and Shut Up

By second year, says Susan Miller, 2L, "It's less intimidating, because everybody knows they can say 'pass' and the world will not collapse. Professors seem to hit at 2L's and 3L's less — there's not the feeling there was first year of being badgered."

It's the fear of "being badgered" that keeps some 1L hands down. "I once wanted to raise my hand," recalls Linda Maslow, a Section I 1L. "But I couldn't do it. I realized (the professor) wouldn't let me go, he'd ask me another question, and another, after I'd spoken. So I sit back and shut up."

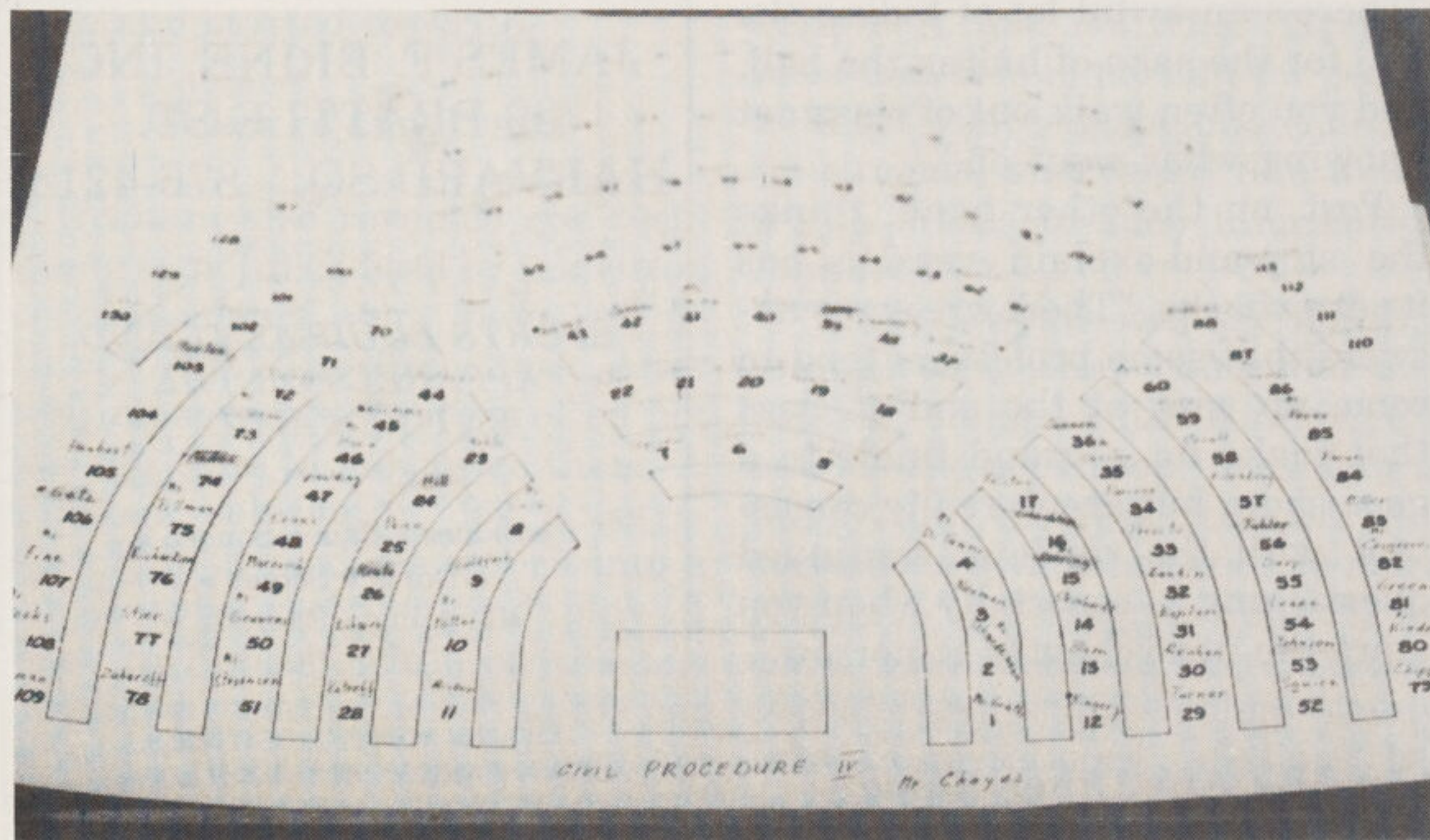
For others, it simply isn't an issue. "I volunteer once or twice a week on the average," says Lisa Poyer, a 1L from Section IV. "I've said stupid things, but not astronomically stupid. I've never minded the Socratic method, either. I've never backbenched, but I have been unprepared. If I don't know, I don't know."

"I was nervous at first," recalls Charles Post, of Section II. "But that's only because of the stories that I was told. I don't think I needed to be."

Still, Post rarely volunteers. "There are so many interesting things being said," he says. "There are so many people who seem to want to talk that I'm content to sit back and talk less than my share. When I have something important to say, I never fail to raise my hand — it just doesn't happen often."

Miller also is not one to volunteer, although as Dormitory Council president she's outspoken. "I never talked (in class) in college or high school and I found no reason to start. There's always someone else who'll ask the question you were thinking of, so why put yourself through it?"

(Continued on Page 4)



The seating chart: The Great Equalizer?

Peer Pressure Deters "Volunteers"

(Continued from Page 3)

Most of the students questioned seemed to fear class derision more than the professor's reaction. "You know that everyone else around you is as bright or brighter," says Miller. "It's exciting, but at the same time you have a feeling you always want to be on your toes — you don't want to let your guard down."

"Who says something that sounds bright" becomes a way of judging self and peers in the first year, Delanty believes. "The professor never gives any feedback, so that's how you do it."

McBreen adds that the feeling of being "on stage" when she spoke first year inhibited her.

Economic Sense

Despite the fear it induces in some, several of those interviewed felt the method had its advantages as a teaching tool.

"Being forced to sit there and reason out the cases because you don't want to feel like a fool in front of everybody does make you read the cases more carefully," says Miller.

"I think the style of teaching here pretty comfortably conforms to what I seek to get out of class," says 1L Thomas Christina, of Section II. "From the point of view of economics it's just about the only teaching method I can think of that would work, other than straight lecture, in a law school environment."

"It's better than lectures for the vast majority of people who go to law school, because it gives practice in thinking on your feet. What it takes away that lectures give is sort of a systematic, organized, and intellectual — in quotes — treatment of a topic."

"But," he adds, "that's available elsewhere. You could be a drone and go to the library to read all those law review articles."

That's Entertainment(?)

"It's more entertaining than lectures," says Poyer. "The material is usually dull as hell. The cases are atrociously written, boring as can be, so, given the option of passing out, it's better this way. And the people in our section are usually pretty funny."

"Lectures would be boring," agrees Maslow. And, she adds, her most Socratic professors have mellowed out by second semester. "It's not as bad as what I'd heard," she says of the method. "I'm more relaxed in class than first term, and it's not that bad for someone who doesn't get called on often. I've been lucky."

On the other hand, Forrest Berkley, a 1L from Section III, thinks the method is used by some "to hassle people."

Hiding the Ball

"In terms of imparting knowledge it's a very wasteful method," he says. "You've learned to choke on your feet, you haven't learned to think on your feet. I think Legal Methods and Ames are much better vehicles for learning to think on your feet."

He has quarrels with the way the method is handled sometimes. "I think the Socratic method can be tremendous, if the teacher takes the time, every 15 minutes or so, to tell you what's going on," he says. "There's an awful lot of hiding the ball for the sake of hiding the ball, and you often walk out of class not knowing what went on."

Post, on the other hand, thinks the stop-and-explain version has its drawbacks. "There are some answers that some professors tend to come up with at the end of class that make for a grand finale to a good show, but aren't really consistent with the spirit of continued questioning — especially when you start the next chapter tomorrow."

By Any Other Name

What's used at HLS isn't the true

Socratic method, he's quick to point out. "You'd never see Socrates pretending to know as many answers as some professors here pretend to know. It's more like Aristotle's Academy — he knew it all."

Christina also thinks the method is misnamed, and draws on a classical background to prove it. "Nowhere in the Platonic or Xenophontic corpora is Socrates shown being curt or angry with his interlocutors if they fail to give the correct answer the first time they are asked a question," Christina says.

"The one place is in Aristophanes' *Clouds*, where Socrates does call Strepsiades a fool when he proves unable to plead certain affirmative defenses to a hypothetical action of assumpsit.

"So," he adds with a smile, "it probably should be renamed the Aristophanic method."

Planned Obsolescence?

Whatever it's named, Berkley thinks it has outlived its usefulness a few weeks into the term. "I think you get all the benefit out of it pretty fast — I don't think the charade should continue a full year."

"Why," he asks, "if the Socratic method is such a great teaching tool, do they not teach 2L's and 3L's by it?"

"It wouldn't work second or third
(Continued on Page 16)

JAMES F. BRINE, INC.
29 BRATTLE ST.
HARVARD SQ. 876-4218

*SPORTS EQUIPMENT AND
APPAREL FOR THE
ENTIRE FAMILY*

- Skates • Skis • Squash •
- Darts • Soccer •
- Jogging • Exercise •

WARM WINTER CLOTHES:
DOWN PARKAS AND VESTS, HATS,
GLOVES, SOCKS, LONG UNDERWEAR
AND SWEATERS

CBS Reporter Wants TV in Courtroom

by Neil Lubarsky

"This is the first time I've been in a room with so many lawyers while not also in the presence of an unindicted co-conspirator," said Fred Graham, CBS Supreme Court reporter and a lawyer himself.

Noting that he had been offered admission at Harvard Law School but gave up his plans when he got hooked on journalism in Tennessee, he told his Law School Forum audience last week that he was glad to finally make it to Harvard, "following in the footsteps of such famous people as Hunter Thompson, Chevy Chase and Ann Landers."

Graham, who earned his law degree at Vanderbilt Law School, served as a Supreme Court reporter for the New York Times before joining CBS.

One of the several anecdotes that peppered Graham's talk on "the Legal Beat in Washington" concerned television correspondent Bernard Kalb. Graham recalled that Kalb spent the entire weekend before starting with CBS practicing pointing a microphone back and forth between himself and an imaginary interviewee. During one of his first television assignments, Kalb questioned a U.S. Senator, correctly pointing the microphone at himself. As the senator began to respond, Kalb tucked the microphone under his arm, grabbed a pad, and started to write.

Trick of the Trade

Graham also revealed one technique sometimes used by television correspondents who have to do things right the first time. After writing speeches, there is often not enough time to memorize them. A common solution is for a correspondent to read his speech into a small tape recorder and play it back to himself while on the air. The tape recorder, wired to his ear through his shirt, is flipped on when the newsmen gets his cue. While on the air, the newsmen listens to his own taped speech, and,



Fred Graham, CBS News correspondent.

with a lag of approximately two words, repeats them verbatim.

"Nixon spoke of the 'leer and sneer' of the CBS commentators. What Nixon didn't realize was that what he thought were 'leers and sneers' were really the unavoidable glassy looks of commentators using this technique." Graham gave it up in favor of memorization.

In discussing the legal beat, Graham said, "We keep on hearing that the world is being taken over by lawyers and judges. Most people believe it, and it's true." Graham feels that it is important for people to know what is going on inside the courtrooms, and would like to see media access to such information improved.

"Many lawyers will say nothing to reporters. They don't like discussing things with non-lawyers outside the courtroom." Graham is happy that the American Bar Association attitude has become more receptive to lawyers discussing cases with reporters. A relaxation of the present rules would probably lead to more open relations between lawyers and the media.

Graham also addressed himself to the conflict over whether televi-

sion cameras should be allowed in courtrooms. Graham mentioned the Supreme Court's decision in the *Estes* case, a 5-4 decision in which the televising of a trial over the objections of one of the parties was deemed to be a violation of due process. One of the arguments relied on by the majority was that the whir and the lights of television equipment created a disruptive circus-like atmosphere in the courtroom. It was also claimed that being on television could have had a psychological effect on the witnesses. Graham contended that witnesses can get used to televised trials, and insisted that present-day televising, with the use of the most modern equipment, is no more disturbing than the new recording devices being used by court reporters.

Playing Chicken

Graham feels that the Supreme Court will probably reverse its decision eventually. Florida has for the past year allowed televising of trials. If the Supreme Court accepts an appeal on this issue, it has the choice of overruling its previous decision or in effect nullifying the results of all Florida cases which have been televised. Graham believes "the Supreme Court of Florida is playing chicken with the U.S. Supreme Court and I think the (U.S.) Supreme Court's going to blink."

As for actually televising proceedings of the Supreme Court, Graham perceives strong resistance. Chief Justice Warren Burger, when asked about this possibility, is reported to have said, "The only time they will get cameras in there is upon my funeral. . . The problem is that if the cameras are allowed in the court, some people will ham it up."

Graham added, "It's clear, as long as he's the chief justice, there'll be no electronic gear in the Supreme Court except electric light bulbs."



Does LSAT Measure Legal Aptitude?

By Howard Zaharoff

Standardized testing has become an accepted element of American life, with standardized tests being used to measure one's I.Q., job preferences, vocational aptitude, scholastic aptitude, and of course one's "legal aptitude." Recently, standardized testing has come under heavy attack for alleged racial and socio-economic bias. Yet this challenge is only one aspect of a broader challenge concerning the extent to which such tests even begin to accomplish what they claim to do.

The LSAT (Law School Admission Test) yields scores which are supposed to be "reliable indications of certain mental abilities related to academic performance in law school," according to the 1977-78 Law School Admission Bulletin. The question of how well the LSAT measures up to this claim is a crucial one, particularly when you consider that, according to Assistant Dean of Admissions Russell Simpson, the LSAT is a requirement for admission at every accredited law school in the U.S.

HLS Admissions Policies

The importance of the LSAT to admissions decisions is illustrated by admissions policies and statistics at the Harvard Law School. The LSAT's have at least a dual use here. First, according to Director of Admissions Patricia Lydon, the formulas which the six-person Admissions Committee (composed of herself, Simpson, Assistant Director of Admissions June Thompson, and three faculty members) uses for its initial evaluations of applicants "weight 50-50 LSAT's and undergraduate grades."

In addition, the grades used are not simply those the student earned at college. Rather, explains Lydon, the grades which go into admissions formulas are adjusted on the basis of the average performance of the LSAT of previous graduates of the applicant's school.

Officially, then, the LSAT's play

a major role in Harvard's admissions decisions. Dean Lydon says this is tempered somewhat by other factors: applicants' class ranks are felt to be significant, and every application is read with an eye towards nonacademic qualities and achievements, such as the obstacles applicants have overcome or the contributions they made as undergraduates.

Nevertheless, Harvard's admis-

*Of 800 acceptances,
nearly 600 went to those
scoring 700 or above*

sions statistics are telling: of the approximately 800 acceptances sent out in 1977, more than 700 went to applicants with LSAT scores above 650 and nearly 600 went to those scoring 700 or above. And both deans agree that differences in LSAT scores can be crucial to admissions decisions. Dean Lydon says that a 60 point difference in LSAT scores can matter, and Dean Simpson candidly admits that, although "a 10 or 20 point difference doesn't make much difference, anything more than that probably does."

Flaws in the LSAT's

Of course, this is only the admissions process at Harvard. Yet if Dean Simpson is correct, many other law schools base admissions decisions entirely on criteria designed to measure academic success. Foremost among these criteria are LSAT scores. So if there are drawbacks with the LSAT, there will be drawbacks with law school admissions policies. And many people have claimed that the LSAT's are indeed flawed.

In the first place, Dean Simpson refers to the LSAT as "a regularized test of legal aptitude." This might be termed the "official" view, reflecting what the LSAT's are supposed to be. Dean Simpson can speak with some authority here, for he is a member of the Law School

Admission Council (LSAC), the organization, composed of one representative from every accredited law school, which actually owns the LSAT.

Yet this official view of the LSAT is questioned by a Harvard student formerly involved with the largest LSAT preparation course in the country. He explains that basic to his method of preparing students for the LSAT (and similar tests) was to find "the points at which it collapsed into an achievement test." Certain parts of the test, such as the old chart reading section and its replacement section of high school algebra and geometry, are "blatantly achievement," he says.

The preparation program embodied a dual approach of familiarizing students with the examination and teaching them the information needed to do well on the achievement parts. It is a system which seems to have worked: the student claims that, though for two-time LSAT takers the ETS (Educational Testing Service, creator and administrator of the LSAT) reports a median increase of about 30 points, for those in his program who took the LSAT previously, the reported median increase was about 100 points.

Validity Studies

With people challenging whether the LSAT is truly a "legal aptitude" test, one might ask whether the ETS or LSAC has any data to prove the test's validity. According to Dean Lydon, the ETS performs validity studies yearly, and Harvard performs its own studies every two years. These studies examine how accurately the LSAT's and/or undergraduate grade point averages predict first year law school grades, an indication of one's success in law school.

Dean Simpson says that the correlation coefficient of Harvard's admissions formulas and first year grades ranges from .5 to .62. This means roughly that 25% to 36% of

(Continued on Next Page)

LSAT Results Crucial, Yet Flawed

(Continued from Page 6)

the differences between actual first year grades and predicted first year grades are explained by differences in the LSAT-cum-g.p.a. scores.

Though this may not sound high, two things must be kept in mind. Dean Lydon suggests that one reason for the low correlation is the limited range with which Harvard has to work. People with low LSAT scores and low g.p.a.'s rarely get into Harvard, so it is impossible to check how accurately the formulas predict grades on the lower end of the spectrum. Dean Lydon believes that were there no such range restriction the correlation would be higher.

Dean Simpson explains that "a correlation of .3 or better indicates a definite causal relation." Interestingly enough, however, he also says that the correlation of undergraduate grades alone is about .25 and of LSAT's alone around .3. Thus exclusive or near-exclusive use of the LSAT presumably would yield minimally reliable results.

Is the LSAT Objective?

In addition to questioning whether the LSAT measures "legal aptitude" or predicts law school "success," one might also question whether it is an objective exam, or is instead biased, as suggested in the beginning. The student quoted above, for example, claims the LSAT is "particularly pernicious in its effects on socio-economic groups. It is designed for upper-middle class white males."

Studies have been done which show gaps in median scores of males and females, rich and poor, and huge gaps (of 100 points or more) between whites and non-whites. Unless one is willing to accept that genetically the "legal aptitude" of the poor, females, and nonwhites is lower than that of the wealthy, males, and whites, one may have to assume that the tests are biased to some extent.

This student doesn't rely on such studies as much as on his own experience working with the underprivileged. "It was an interpersonal discovery that my students were consistently unable to do well, in spite of my conviction that I was dealing with bright people."

Harvard is aware of these allegations. Because of the *Bakke* case Dean Lydon isn't free to discuss HLS's minority admissions policy in detail, but she does claim that the possible socio-economic and racial bias of LSAT's is taken into account when applications are read, as each application is.

A Potential For Misuse

But even if HLS's admissions policy is as fair-minded as its directors claim — with an awareness of possible test bias, a sensitivity to personal factors, etc. — it is doubtful this is the case at all law schools. The objective appearance of LSAT scores is bound to influ-

ence admissions committees to place undue reliance on them.

Two stories bear this out. The student quoted above describes a program developed by the City College of New York in conjunction with the New York Law School, in which 50 CCNY sophomores took classes at the law school. If they got B's or better in college courses and C's or better in law school, they would be admitted to the law school at the end of their junior year . . . provided they attained the minimum LSAT score established by the school for admission.

The puzzle is, if these students demonstrated the capacity to do C level work or better in law school, why did they have to take, let alone get some minimum grade on, an examination whose main claim to fame is its alleged ability to predict success in law school? This reliance on LSAT's seems to demonstrate what the student calls the "mystique" ETS creates around itself and its tests.

The second story brings us home again. Both Deans Simpson and Lydon are aware that the score one gets on the LSAT is merely an estimate of one's "true score." As Dean Simpson explains, "if you took all those who scored 700, two-thirds would have a true score between 670 and 730. One-sixth would have a chance of scoring better than 730 and one-sixth of scoring less than 670."

Thus a difference in LSAT scores of 30 or 40 points has hardly any statistical significance. Yet according to Simpson, a difference between the LSAT scores of two candidates of more than 20 points can influence the admissions decision.

Given doubts about the "aptitude" aspect of LSAT's, about their reliability as success predictors, and about their objectivity, given the obvious tendency to place too much reliance upon them and misuse them, one can only wonder whether the use made by the law school admissions committees of LSAT scores shouldn't be drastically revamped . . . or eliminated.

SPORTS QUIZ

1. What three iron men played in all 162 baseball games last season?
2. What are the only three major sport teams whose nickname does not end in an "s"?
3. How many World Series games have been played in the "House that Ruth Built" (new and old)?
4. For what lapsed or transferred N.B.A. franchises did the following players perform: 1) George Mikan 2) Dolph Schayes 3) Bob Pettit 4) Paul Arizin 5) Oscar Robertson?
5. Who scored the touchdown that ended the first overtime NFL championship game?

TGIF: Friday, March 3 from 4-6 p.m.
in the Hark.

"THE GRAPES OF WRATH"

Saturday, March 4 at 8:00 p.m.
and 10:00 p.m.

in the Harkness Commons Dining Hall.

Admission: \$1.00 or \$.50 with
HLSDC Activity Card.

SPRING DANCE: Friday, March 3 from
8:30 p.m. to 12:30 a.m. in the Harkness
Commons Dining Hall. Live rock band.
Admission: \$1.00 or free with HLSDC Ac-
tivity Card. College or Grad. ID required.

Profs Question Burger's Blast of Trial Counsel

(Continued from Page 1)

Bellows noted that improvement in the quality of the trial bar is a noble goal, but added that the Chief Justice's comments were "needless and unnecessary."

"We would like to see improved clinical education too," she said, "but having comments reported like that is unnecessarily damaging to our profession."

From her own experience with trial lawyers, Bellows finds the Chief Justice's comments to be inaccurate, but she warns that "if the Chief Justice can back this up with empirical evidence, then we have a crisis and should do something about it."

Fair Critique

Reaction to the Chief Justice's comments at Harvard Law School ranges from praise to scathing criticism.

Prof. Charles R. Nesson commented, "Whether he's accurate or inaccurate is totally irrelevant. The point he's making is a fair one."

Nesson noted that law schools should be the best recipients of Burger's remarks. "Lawyers could be much better trained for the tasks they do," he said. "His comments are best directed at the law schools, and programs like trial advocacy are a response to this."

Massachusetts Superior Court Judge John Paul Sullivan, an instructor in the trial practice program at Harvard, disagrees with both Nesson and the Chief Justice. "I can't say that the quality of the lawyers who come before me are as the Chief Justice says," he noted.

"We have outstanding trial lawyers in Massachusetts generally. They meet extremely high standards of advocacy."

James D. St. Clair, noted Boston attorney and also an instructor in the trial practice program, echoed Sullivan's remarks. "Of course there is room for considerable improvement in the capabilities of the trial bar, but my own experience does not bear out the Chief Jus-

tice's comments," he said. "Most of the lawyers I come up against are pretty competent."

Both Sullivan and St. Clair defend the propriety of the Chief Justice making such comments. "If he were truly concerned about problems like this, then it's his position to comment," Sullivan said. St. Clair added that "it is implied in his role as chief judicial officer to do whatever he feels will improve the nation's judicial system."

No Ethical Problem

Prof. Andrew L. Kaufman, author of *Problems in Professional Responsibility*, finds no ethical problems with Burger's remarks. "As Chief Justice he has an administrative position at the top of the federal system, and he is performing a public service in speaking out on matters relating to judicial business," he said.

Kaufman noted that the fact that Burger was not speaking with first-hand knowledge of the trial bar presents no problem. "He was not purporting to speak out from personal experience of trial lawyers," he said. "Most of what the Chief Justice was relying on are reports of trial judges to him. If

he thinks there's a problem, then he has a duty to do something about it."

"If from what judges tell him there is incompetence, then it is his ethical duty to make that known."

Prof. Alan M. Dershowitz takes a radically different view of Burger's comments. "He is absolutely not in a position to criticize lawyers," Dershowitz said. "He has no experience whatsoever with trial lawyers. He says what he hears from his fellow judges."

Dershowitz feels that the Chief Justice's remarks would best be directed elsewhere. "Judges are the most serious problem in this country," he said. "It is the extreme of arrogance for Warren Burger to criticize lawyers when he should be cleaning his own house and directing his comments toward judges."

"I'm not going to defend the trial bar in this country, but the major part of the problem is the judiciary," he said.

Dershowitz directed his criticism of judges to both the national and state judiciaries. "The problems with judges extend to federal as well as state courts," he noted. "There is an incredible lack of preparation of the Supreme Court justices, including the Chief Justice himself."

Law Notes

The Felix Frankfurter exhibit in Langdell Library has been extended through Wednesday, March 15.

* * *

Professors Ferguson, Fried and Shapiro are currently accepting applications from students interested in teaching first-year Legal Methods sections next autumn.

* * *

Celebration 25 T-shirts are back by popular demand despite the storm. They are on sale weekdays from 12 to 2 p.m. in the Celebration 25 office in the basement of Hastings Hall near the north entrance.

* * *

The East Asian Speakers Program will present Frank Upham, '74, research fellow at the East Asian Legal Studies, speaking on "Japan's Environmental Law: Recent Developments and Prospects," at 1:10 p.m. on Monday, March 6 in Pound 419.

Judges Not Qualified

"The judges set the level of quality of the bar in this country, and the lawyers are brought down to the level of the judges," he said. "Lawyers are far more qualified than the judges they appear before."

The stir created by the Chief Justice's comments is certainly focusing attention upon what the *New York Times* referred to as "his public crusade for better advocacy." And that may suit the Chief Justice quite well. Burger noted that the Illinois resolution did more to focus public attention "on this cause than all the speeches I have given in the past dozen years."

✽

Edelin Recalls Abortion Trial

(Continued from Page 2)

thing negative. I got lots of mail, and 95 per cent of it was supportive."

For many people, their view of the trial has been shaped by a two-hour dramatization produced by WGBH, the Boston public television station. Edelin believes WGBH tried to be "too fair. They seemed to try to give each side exactly one hour, and that didn't reflect what things were really like. My lawyer devastated the prosecution witnesses, and that didn't come out in the show. The prosecution presented supposed eyewitnesses who weren't even present at the operation, and that wasn't in the show either."

Nevertheless, Edelin is generally satisfied with his treatment at the hands of the press: "The press was very fair. That's why I continue to give interviews."



Law Notes

A New England Conference on Soviet Law, Human Rights and Soviet Jewry will take place on Sunday, March 5 from 1:30 to 5:00 p.m. in Austin Hall.

The Conference is sponsored by the American Jewish Congress, New England Region, and the Jewish Community Council of Metropolitan Boston, in cooperation with the Public International Law Committee of the Boston Bar Association and the Harvard Jewish Law Students Association.

The Conference is open to all interested in the problem of human rights in the Soviet Union and Jewish emigration. It will explore the legal situation in the Soviet Union and discuss methods of involving American lawyers in helping Soviet Jews.

Featured at the Conference will be visiting Prof. Telford Taylor, chief counsel for the U.S. at the Nuremburg Trials and authors of "Courts of Terror — Soviet Criminal Justice and Jewish Emigration;" Professor Alan Dershowitz of Harvard Law School; George Ginsbergs, professor of Foreign and Comparative Law, Rutgers University, Camden, N.J.; and Burton Caine, professor of law, Temple University and member of the National Lawyers Committee of the National Conference of Soviet Jewry.

MARCH 3, 1978

March 1, 1978

COOP NOMINATIONS

In accordance with Article VI, Section 1, of the Bylaws of the Harvard Cooperative Society, as amended, the Stockholders of the Society have nominated the following individuals for election as Student Directors of the Society at the next Annual Meeting of the Stockholders in September, 1978.

IMPORTANT — Members seeking nomination as student directors by petition are urged to obtain a sample form of petition and a more detailed statement of the requirements governing petitions from the cashier in any Coop store.

STUDENT DIRECTORS

Radcliffe College

Lisa A. Rotenberg Class of '80

Harvard College

*Karlo F. Duvnjak Class of '80

*Felix F. Twaalfhoven Class of '79

*Charles F. Wu Class of '79

Harvard Graduate Schools

*Marvin Bagwell Class of '79, Law

Robert F. Nerz Class of '79, Management

Bruce D. Porter Class of '80, Arts & Sciences

Massachusetts Institute of Technology Undergraduates

John M. Amadeo Class of '79

William H. Harper Class of '79

Massachusetts Institute of Technology Graduate Students

Christopher K. McLeod Sloan School of Management, '79

Cecilia R. d'Oliveira Sloan School of Management, '79

*Currently members of the Board

PROCEDURE FOR MAKING ADDITIONAL NOMINATIONS FOR STUDENT DIRECTORS

Pursuant to Article VI, Section 2, of the Society's Bylaws, as amended, additional nominations for student directors may be made by petition signed by at least one hundred (100) student members and filed with the Clerk (by leaving the petition at the General Manager's office in the Harvard Square Store) not later than 5 p.m., March 22, 1978. A signature will be invalid unless the student designates his membership number and school and he is currently enrolled as a degree candidate in that school.

IF A STUDENT MEMBER SIGNS MORE THAN ONE PETITION, HIS SIGNATURE ON EACH PETITION WILL BE DISREGARDED.



HARVARD SQUARE
HARVARD LAW SCHOOL
M.I.T. STUDENT CENTER
HARVARD BUSINESS SCHOOL
CHILDREN'S HOSPITAL MEDICAL CENTER

Casting the First Stone

The first stone has been cast.

Chief Justice Burger has hurled it at the Nation's trial bar. Speaking not from first-hand knowledge but from the consensus of his subordinates on the bench, Burger claims that up to 50 percent of American trial lawyers are incompetent. Their conduct in the courtroom often is bad enough to constitute legal malpractice, Burger argues.

It may be that the Chief Justice is right on target in his critique. As Chief Justice, he has the right and the responsibility to speak his mind, especially since strong and vigorous legal representation is a right inherent in any lawyer-client relationship. But Burger's remarks are at best ill-timed and at worst hypocritical.

Incompetent judges are a much more serious problem facing the American bar. They produce a far more devastating effect on the judicial system than incompetent lawyers do. The legal system can more easily rid itself of incompetent lawyers than incompetent judges. A bad lawyer simply loses clients in the marketplace; the bad judge is allowed to stay on the bench in the absence of official malfeasance or other causes for impeachment.

What Burger said is really nothing new. As early as 1973 the Chief Justice remarked on the poor quality of trial lawyers and last summer he made similar statements in London before the Royal Commission on Legal Services. But his recent comments are especially ill-advised because of the impending congressional legislation to increase the number of federal district and circuit court judges.

In his position atop the American judiciary, Burger might have done better to direct his energies toward urging appointment of competent judges, since many of the new jurists may come from the allegedly incompetent ranks of trial lawyers. He might have commented on a political system which currently gives the senior Democratic senator in each state carte blanche to recommend candidates for judgeships. And he might have endorsed a nominating process such as Senator Kennedy uses, wherein a selection committee of local lawyers recommends nominees to the senator.

The Chief Justice may be perfectly correct in criticizing the quality of trial lawyers. But he and his colleagues on the benches would do well to heed the Biblical warning: "Let he who is without sin cast the first stone."

HARVARD LAW RECORD

CHARLES E. CHEATHAM	Editor
TERRY KEENEY	Managing Editor
BILL ROSS	Associate Editor
CHARLES JORDAN	Senior Editor
ANDREA BROWN	Senior Editor
LARRY ZELENAK	Executive Editor
TAMMY JACOBS	News Editor
TONY LICATA	Photography Editor
JEFF SCHUMACHER	Business Manager

Staff: Gary Betow, Paul Coady, Jay Darby, Elaine Exum, Ken Gormley, Howard Gutman, Pat Hanifin, Charles Johnson, Madison King, Barbara Kritchevsky, Jeri Macon, J. Ezra Merkin, Randy Phillips, Steve Prye, Robert Reznick, Jorie Roberts, Robert Ruxin, Joan Shear, Scott Sherman, Michael Smith, Ellen T. Taylor, Hayden Trubitt, Larry Vilardo, Howard Zaharoff.

Fenno

"May it please the Court," said the 1L, opening his moot court oral argument. "My name is Harrison Cistern, and I got an A- in Criminal Law and a B in Torts."

"Jeez," said a member of the other team, turning to her partner, "this guy must have studied under Jimmy St. Clair."

Judge Fenno, sitting by designation because the Chief Justice had suffered a back injury requiring hospitalization, rocked back and forth in his chair. The chair emitted a loud, monotonous groan and Fenno, thinking he was sitting in Louis Loss's Corporations class, drifted quickly off to sleep.

Awakened a few moments later by the judge on his left, who was busily balancing equities with great animation, Fenno began to speak.

"Counsel," he said, "it appears your argument is based on dictum in a dissent from an unreported 1887 decision by the Court for the County of Outagamie, State of Wisconsin. Might you have a more compelling precedent for us to consider?"

The 1L stood wide-eyed for a while, and then began to search through his pockets.

"I'm sure I had one here somewhere," he chuckled. "Guess I must have left it in my other suit."

Fenno looked slightly bored. He was, in fact, extraordinarily bored. Sensing the opportunity, the student judge on Fenno's right shuffled some papers and cleared his throat.

"Counsel," he said, trying to speak the way Learned Hand looked, "I know you're thinking I'm just a two-bit student judge and that I don't know anything, so I shall now grill you on an incredibly cosmic point comparing precepts of federalism with the State Health Code which, by the way, has nothing to do with this case. I expect in this way to win your silent admiration."

"Or," Fenno interrupted, "convince him that you're a two-bit student judge who knows less than nothing."

Fenno again directed his attention to the podium. Magically, a new speaker had appeared.

"Counsel," he said, "if you have anything to say on behalf of your client before I kick him out of court on his keester, better make it snappy. I've already missed the first twenty minutes of *Charlie's Angels*."

The 1L, stunned, said nothing.

"Good," Fenno said, and walked out, leaving behind him two teams trying to figure out which had won best brief.



Letters to the Editor of the RECORD

Baseball Query Strikes Out

To the Editor:

Whoever is in charge of the Sports Quiz should stick to briefing cases. The answer to question 2 in the Feb. 17 issue incorrectly lists Yaz and Mickey Mantle as the last two players to win the AL triple crown. Frank Robinson won the crown in 1966 playing for the Orioles. I'm sure Frank and his family would appreciate a correction.

Incidentally, why is that female student smiling on page 16 of aforementioned issue?

Paul N. Stein
Cleveland, Ohio

Forced Retirement Wastes Talent

To the Editor:

As a member of the class of 1919 still actively engaged in practicing law, I wish to endorse the editorial entitled "Forced Retirement: A Waste" in the January 27 issue of the RECORD. Age as a criterion of capability is a poor criterion, and forced retirement of a fully capable person is not only an injury to him but is more importantly a deprivation of his services to others. It is no excuse that some age of forced retirement must be adopted to save the feelings of others who may have become incapable at 60 or even earlier.

It seems to me clear also that the person or persons involved should not make the decision but that the decision should be made upon the existence of capability.

A lawyer is fortunate in that the only persons who can retire him are his clients, and they are apt to be good judges.

Not only is the forced retirement of capable persons a waste, it frequently destroys the person who is forced to retire. I have had the opportunity to watch forced retirement at age 65 in the industrial world for a long period of time, and it is my general observation that many persons forced to retire die between ages 65 and 70 unless their usefulness has been preserved by desirable employment elsewhere.

H. G. Hudson, '19
Winston-Salem, North Carolina

'One Man's Logic: Another's Baloney'

To the Editor:

You may have no interest in the reflections of a Harvard lawyer's secretary on a copy of the Jan. 27 RECORD as it passes over her desk, but here goes anyway.

The ratiocination of the agent for the law firm which lobbies for a blatant racist government, comparing the Harvard students' interview boycott against his firm to the Scopes Monkey trial, is ridiculous and face-saving, at best.

Shutting up the horse's mouth for the South African government in this country makes fine sense. Donald E. DeKieffer's firm singularly speaks for South Africa; the boycott singularly points this up. Regarding DeKieffer's sarcastic judgment about the boycott . . . one person's logic is another person's phony baloney.

Relishing the delicious taste of grapes and lettuce after a parched ten years in support of the UFW, I say to the boycotters, "Bully for you."

Dorothy Willey
Oak Park, Illinois

Harv. L. Rev. Elects Leebron As President

David W. Leebron, 2L, of Narberth, Pennsylvania, has been elected President of the Harvard Law Review for 1978-79.

Leebron, a graduate of Harvard College, plans no major changes in Review operations. The voluntary system of selection of officers, which he reports has worked "extraordinarily well so far," will be continued. It is expected that roughly half the offers of Law Review membership will be made on the basis of grades, and half on the basis of the writing competition, as was the case last year. Despite the reputed rigors of the presidency, Leebron doesn't expect to spend all his time working: "I hope to be neither brooding nor omnipresent."

Cryptic Law

The following excerpt from a mid-nineteenth century opinion is in "judicial code." Mr. Trautman's Admiralty students should enjoy this week's selection. Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

"Yjgtg c uswctg-tkiigf xguugn cpf c uejqqpqt, dqvj enugicwngf, ctg ucknkpi wrqp eqpxgtigpv eqwtugu, qp vjg ucog vcem, cpf vjg eqpxgtjgpeg ku ecwugf da vjg cdknkva qh vjg uejqqpqt vq nkg pgctguv vjg ykpf, vjg nevvgt owuv ikxg yca."

TAX WRITERS WANTED

Contributing Authors wanted to prepare chapter-length segments of treatise on tax deductions to be published by leading publisher.

The names of the Contributing Authors shall appear in the book and they will receive a small honorarium.

For details, contact:

Mason J. Sacks
Attorney at Law
P.O. Box 9671
Westgate Station
San Jose, Calif. 95157

Apartment insurance, in a low-cost package.

Our single, low-cost coverage protects all your personal property, including credit cards. And not just in your apartment, but world-wide.

W. T. Phelan & Co.

Insurance Agency, Inc.

11 Dunster St., Harvard Square (next to the Holyoke Center).
876-0876. Representing Aetna, Travelers, Hartford.

You'll be lucky if you get out of Massachusetts with your life.

Going to school in Massachusetts could have a dramatic effect on your life. Because as long as you live here, you're eligible to buy Massachusetts Savings Bank Life Insurance (SBLI).

There are a wide variety of SBLI coverages to suit your needs. And the cost is among the lowest available anywhere in the nation.

So before you leave the state, be sure you've got your life in order. Talk to the people at Cambridge Savings Bank about SBLI today.

Cambridge
Savings**Bank**

864-8700

(mail to 1374 Mass.Ave., Cambridge 02138)

Tell me all about life.

Please send me the facts on all the different SBLI policies available from Cambridge Savings Bank.

Name _____ My birth date _____

Address _____

State _____ Zip _____ Phone _____

Rate of Flunk-Outs Is Called Negligible

(Continued from Page 1)

a course before grades are officially released.

"They are notified as the F's come in," Upton said, "either by phone or by mail."

Such procedures, however, have helped fuel rumors this year, especially in third-year courses in Commercial Transactions.

"... a student who fails out of here has something else going on."

"The rumor that I first heard on grades was that 10 people had failed (Professor Andrew L.) Kaufman's Commercial Transactions class," said Timothy F. Hodgdon, 3L. It spread so rapidly that by the next day, "Professor (Paul M.) Bator mentioned Kaufman in his class that morning and a pall hung over the class."

But Kaufman said such rumors were completely unfounded.

"In a dozen or so years of teaching Commercial Law, in some years nobody fails and in some years a couple," Kaufman said. "But I don't remember any more than four ever failing in a big class. It's just a hard course. And it's usually people who haven't kept up who fail."

The grades in the course this year fell within the same range as in years past, he said. "A lot of people did very well," he added.

Kaufman said he wondered whether his exam was a little harder than usual, but he wasn't sure. "I would say that one question on the exam was a little easier than usual, and there was one question that may have been a little more complicated," he continued.

Credit Change Responsible

Kaufman, Bernardi and Upton all cited a procedural change in the Law School's system of credits as a major reason for increased worry about grades among third-year students.

"This is the second year that you

haven't been able to get credit for a certain number of F's," Upton explained. "You used to be able to get seven credits of F and still graduate."

Now students who fail courses may not apply those credits toward graduation. For 3L's, this means they must either take another examination in the course in the spring, add the course again in the spring or take an extra course with enough credits to meet the graduation requirement of 52 credits over the last two years.

Most 3L's manage to finish up in the spring after failing a course in the fall, said Bernardi. "I can't off-hand remember anyone who hasn't," he added.

But, he continued, very few people actually fail a course, let alone flunk out of the Law School.

Research Associate in international tax law needed by Harvard Law School International Tax Program. Research on tax problems of the United States, and possibly other countries, relating to international trade and investment. Minimum requirements: J.D. degree with at least two years experience dealing with U.S. income taxation, preferably in international area. Published tax writing desirable. Please submit written application to Director, International Tax Program, Pound Building — Room 400, Harvard Law School, Cambridge, MA 02138.

An equal opportunity/affirmative action employer.

Professional staff person in field of taxation in developing countries needed by Harvard Law School International Tax Program. Position involves the basic logistics for the organization, design, and establishment of several regional centers for tax training and research in third world countries. Position also involves the preparation of curriculum and teaching materials and may involve some teaching. Minimum requirements: Law degree, experience or training in taxation, experience in one or more developing countries. Desirable: Training and experience in public finance and tax administration, teaching experience. Please submit written application to Director, International Tax Program, Pound Building — Room 400, Harvard Law School, Cambridge, MA 02138.

An equal opportunity/affirmative action employer.

"It doesn't even suggest statistics, the number is so small," Bernardi said. "The standards for flunking are very low. I think it is fair to say that a student who fails out of here has something else going on."

Not Hard to Pass

Professors Philip E. Areeda and Clark Byse agreed that standards for passing courses at the Law School are not difficult.

"... maybe we should fail more students who fail to do the work."

"In a way, no one should fail a course here," said Byse, citing the school's stringent admissions standards and the quality of the students. "But maybe we should fail more students who fail to do the work."

Byse said standards for failure on examinations vary among professors. Some are more willing to fail students who do not evince a knowledge of the course material, while there are "some who have never failed anyone in their lives," he said.

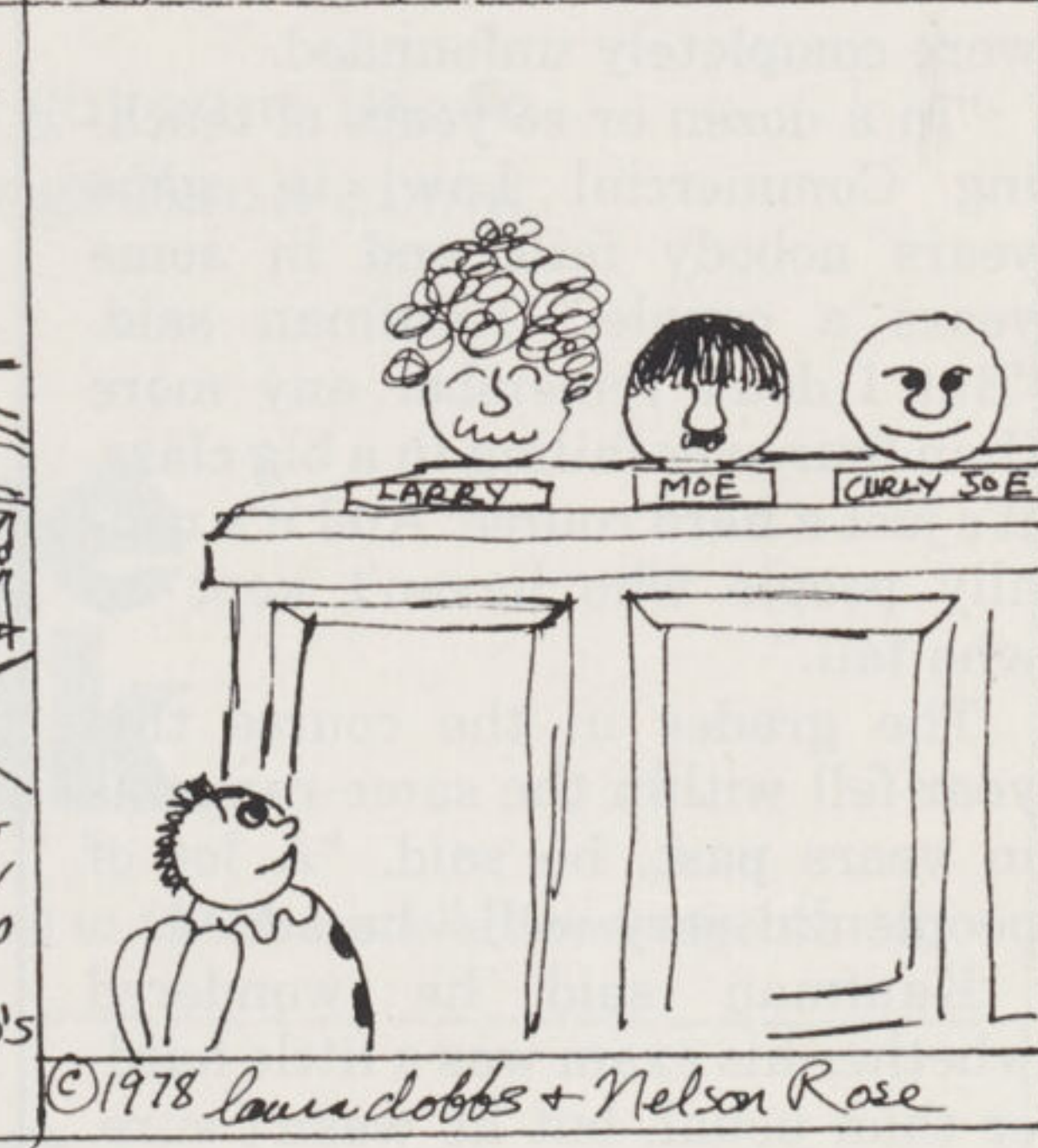
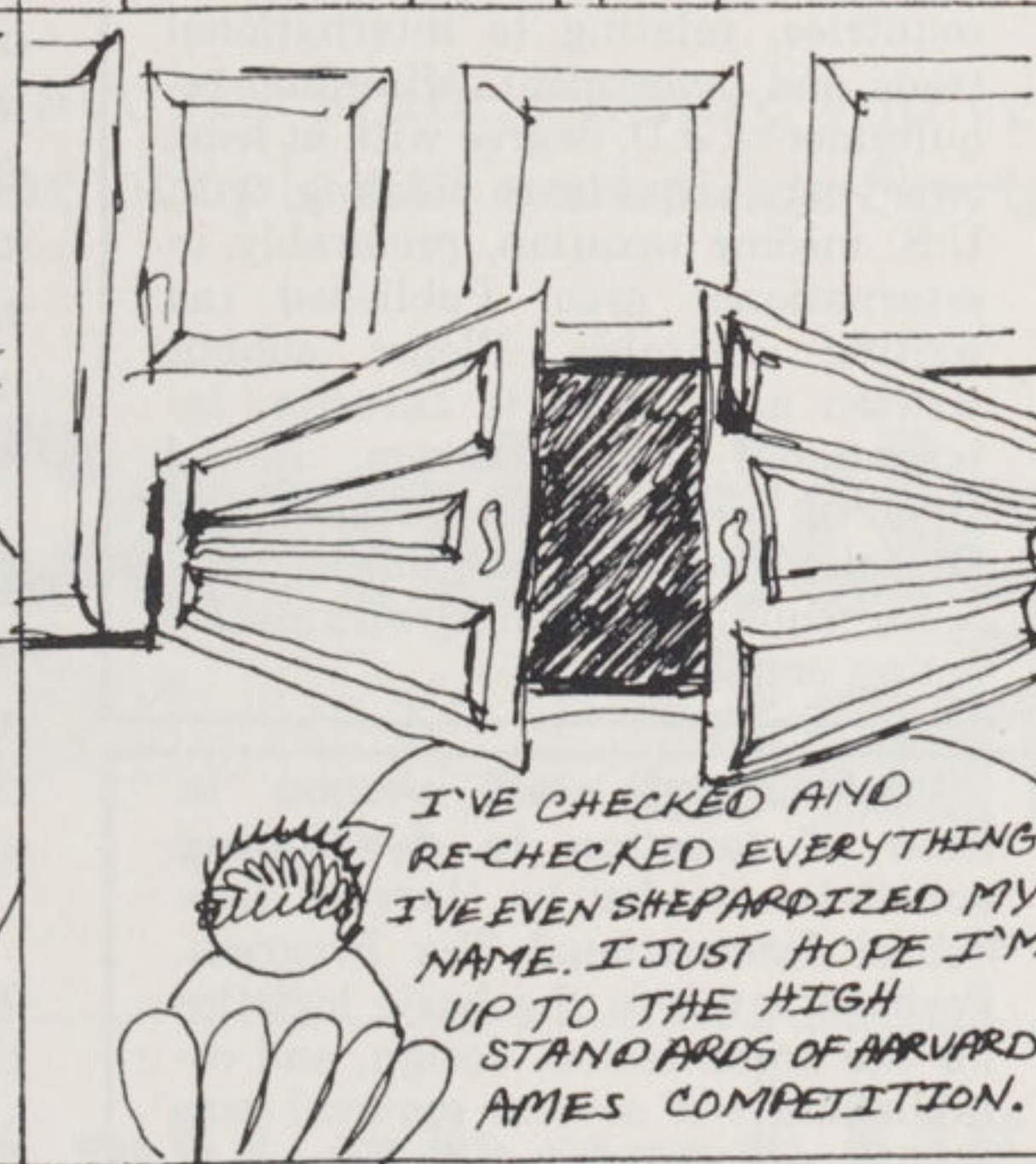
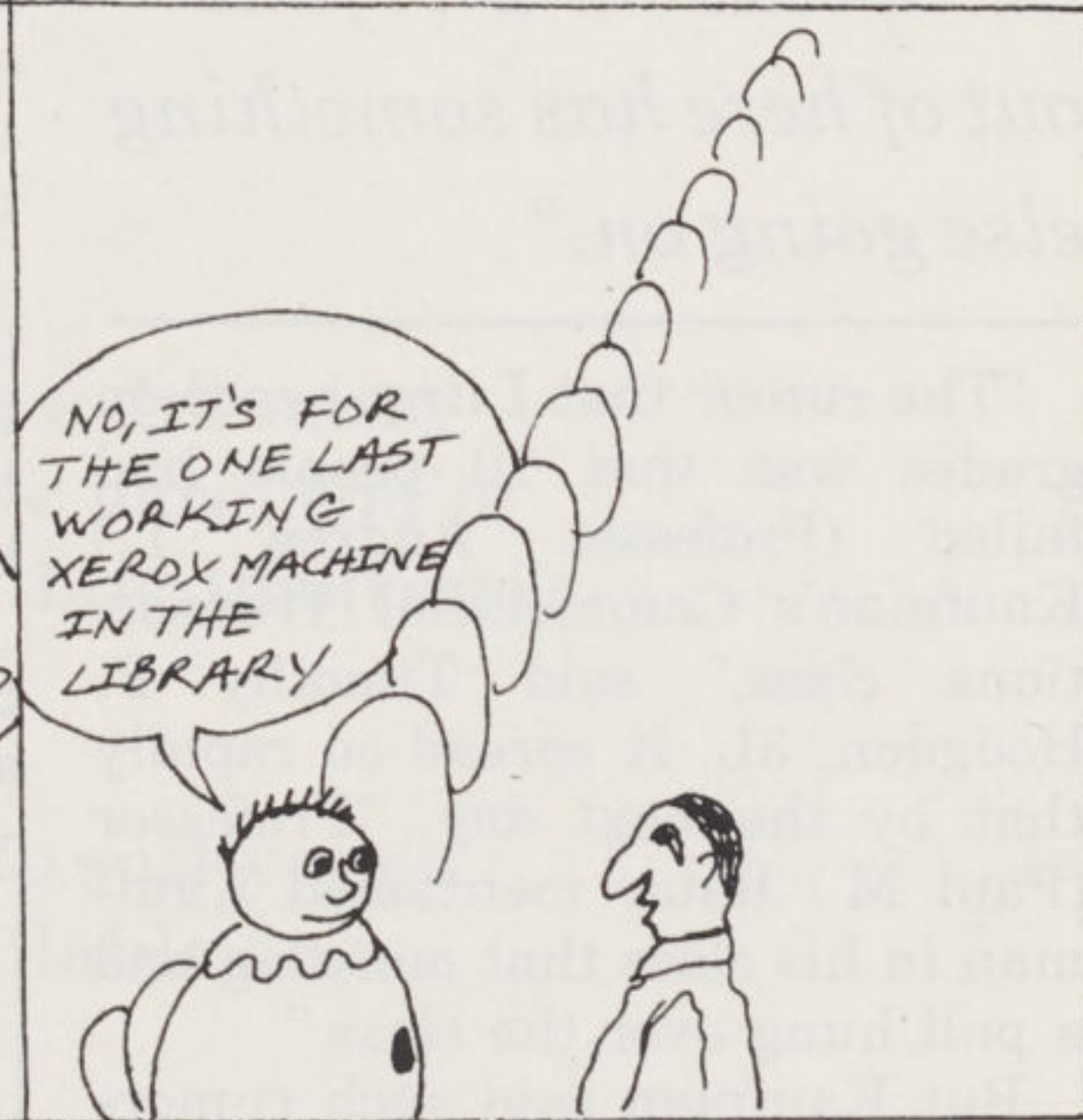
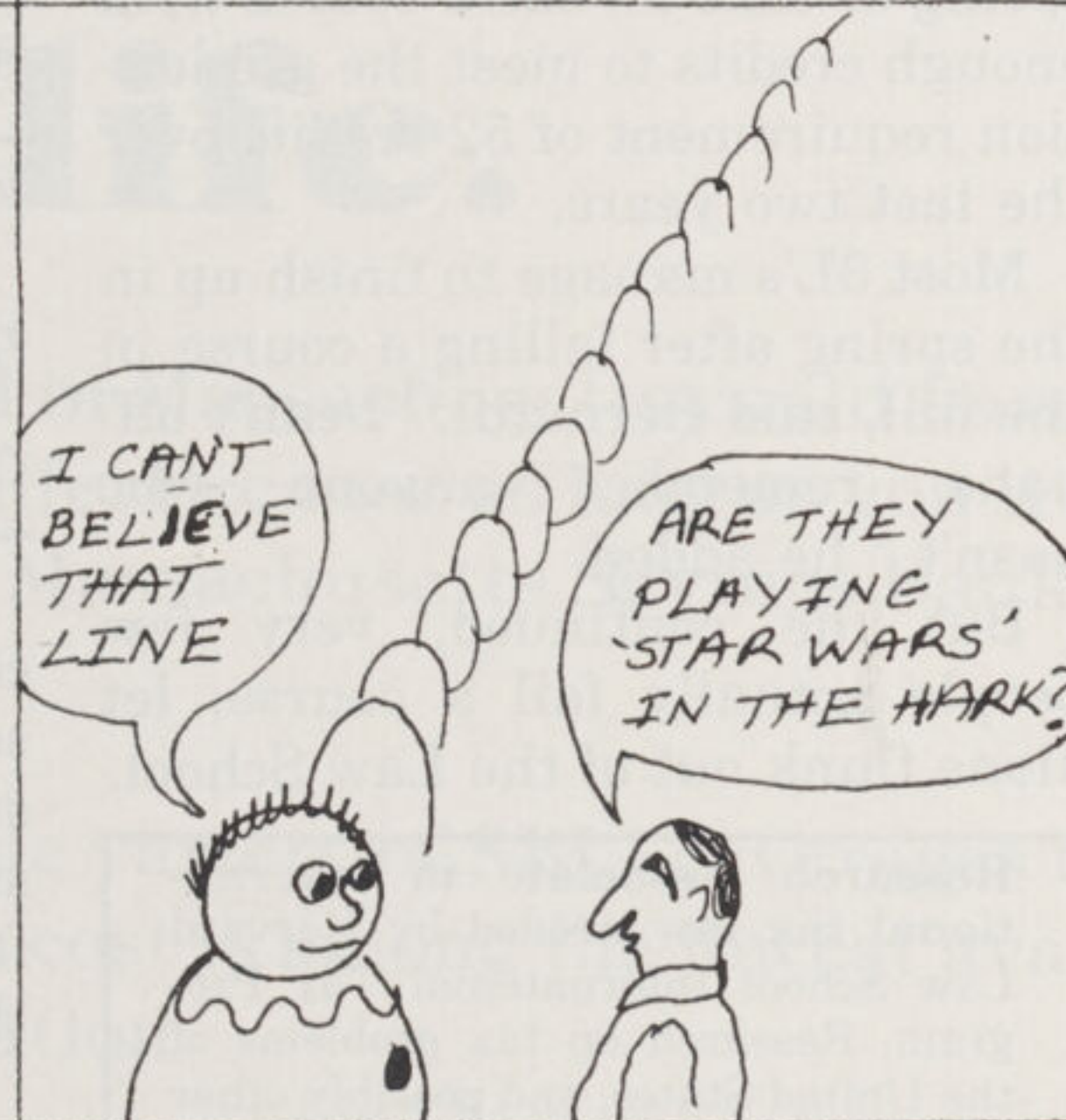
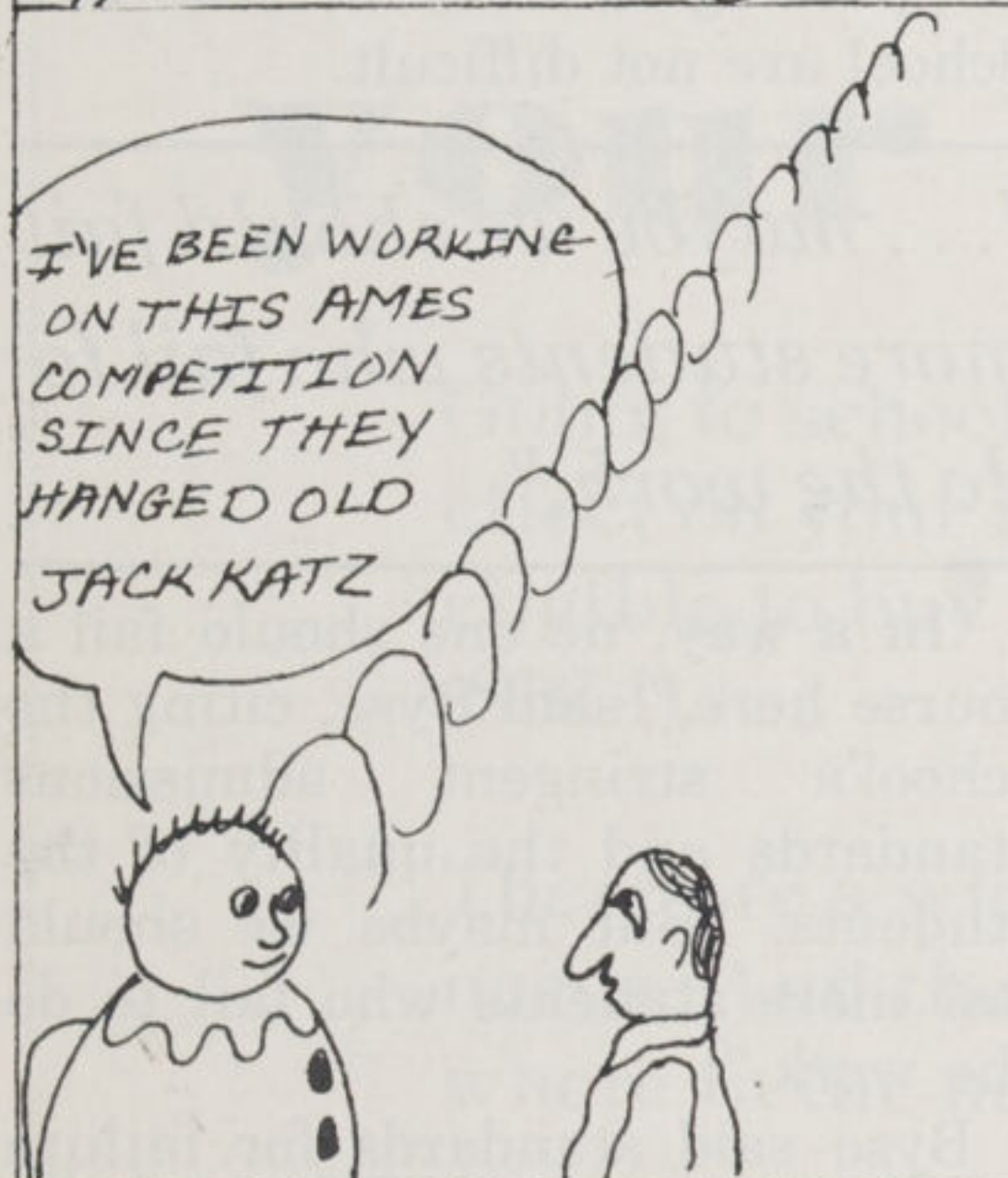
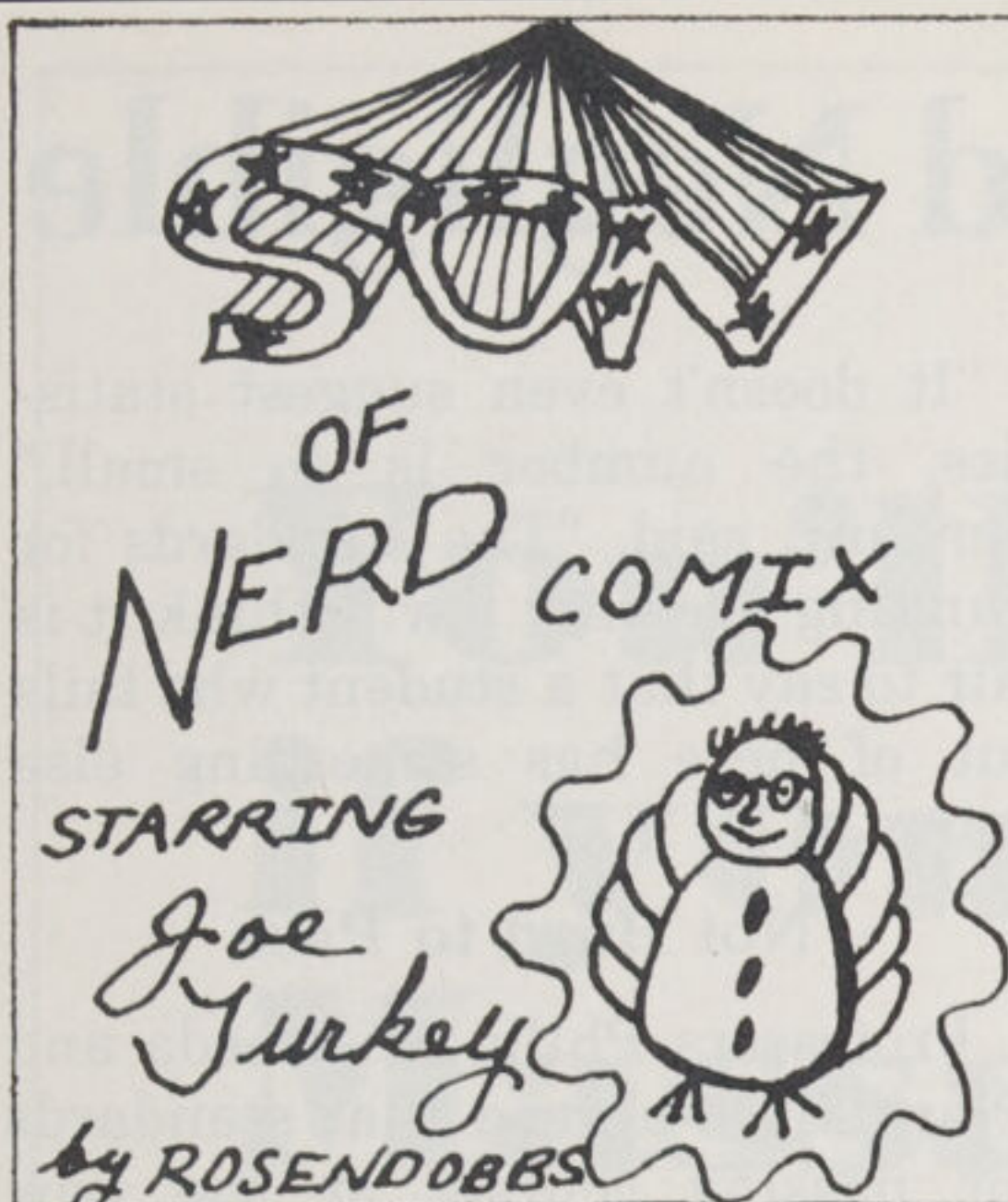
His own standard for a passing grade is whether the examination paper would have been helpful to a judge deciding a case. "Of course, then you have the question of how much help," he added.

Upton said she hopes the release of grades for 2L's and 3L's, tentatively scheduled for either today or Monday, will slow the numbers of students who have been trooping into her office.

The grades will be handed out to students in classrooms, she said. Otherwise, they may be picked up in the registrar's office. She said she had tried mailing the grades and putting them in Langdell mailboxes, but neither of these methods proved satisfactory.

"And I do not send the grades back to professors for recurving," she said.





Sports Answers

1. Pete Rose of the Reds, Steve Garvey of the Dodgers, Hal McRae of the Royals.
2. New Orleans Jazz, Boston Red Sox, and the Chicago White Sox.
3. There have been 79 games played at Yankee Stadium.
4. 1) Minneapolis Lakers 2) Syracuse Nationals 3) St. Louis Hawks 4) Philadelphia Warriors 5) Cincinnati Royals.
5. Alan Ameche in a game between the Colts and Giants.

Solution to "Cryptic Law"

"Where a square-rigged vessel and a schooner, both close-hauled, are sailing upon the convergent courses, on the same tack, and the convergence is caused by the ability of the schooner to lie nearest the wind, the latter must give way." *The Clement, F. Cas. No. 2,879 (C.C. Mass. 1855).* Thanks to A.M. for this week's selection.

Professional Dry Cleaning
and Shirt Laundry
at

Rite-Way
DRY CLEANERS, INC.

KI 7-8008
4 Hudson St., Cambridge
(off 1672 Mass. Ave.)

Close Encounters of the Nerd Kind

By Jay Darby

(There is meeting a Lesley College sophomore at a fall mixer. This is a close encounter of the farce kind.)

There is buying a copy of Black's Law Dictionary from an upperclassman for one dollar off list price. This is a close encounter of the sucker kind.

And then, there is talking with 1L's about the Law. This is a close encounter of the Nerd kind.)

Have you had a close encounter with something *unusual* lately?

I had one just before Christmas. I was sitting at the lunch counter in Bence's Pharmacy, sipping coffee and perusing the paper for news of Celtic defalcations, when the mid-afternoon somnolence was disrupted by the arrival of two men. This duo took repose on the two stools to my immediate right, which in Bence's is indeed immediate, a distance of perhaps two inches. I threw them an appraising glance, and since they were under thirty and not attired in delivery uniforms, I took them to be students. Then I heard a snatch of conversation, and it was clear that they were 1L's.

Significantly, it was not possible to deduce their status by appearance alone. To be sure, some of the first-year men are still trying to muster enough hormones to need a razor, but basically 1L's look like all the other L's at the Law School. Sometimes — but not always — you can spot a 1L on the basis of conduct. For instance, if you see some turkey reading a book while walking around campus, it is probably a 1L, although it may be Roberto Unger.

The only sure way to identify a 1L is to eavesdrop on the conversation. This usually requires little overt effort, for 1L's generally disdain anything approximating normal conversational volume, and instead conduct their conversations in a booming Langdell-addressing-Austin tone, thereby

afflicting not only each other but also passersby with fatuous conclusions on the "Essence of the *res ipsa* doctrine." Other law students discuss the truly relevant issues of the day: eating, sports, sex, malicious gossip, and the starting salaries in New York. In contrast, 1L's talk about law, law, law, law, and — the ultimate 1L discussion — how much other 1L's talk about law. It was this latter topic that opened the conversation last December in Bence's.

"I can't believe how much everybody is talking about law," said the first 1L, whom I shall call A. (Not his real name.)

Some of the first-year men are still trying to muster enough hormones to need a razor, but basically 1L's look like all the other L's at the Law School.

"Yeah, did you hear those two guys at lunch? What turkeys."

I listened to A and B commiserate on their philistine classmates for a while, feeling more like an unwilling victim than an eavesdropper for, as I mentioned, the stools are extremely close and the conversation was conducted in the typical 1L bellow. After lavishing opprobrium on their classmates, the pair switched to a conversation about law, an incongruity that left me somewhat astonished but which fazed the intrepid duo not at all. This conversation quickly became boring, as all such conversations inevitably must, and I soon refocused my attention on the sports page.

I perused the box scores for several minutes, oblivious to the ad-

joining pontifications, when I happened to overhear a statement that grabbed my attention. Indeed, I pulled out my notebook and, as unobtrusively as possible, recorded the following exchange:

"Well, I xeroxed two sets of class notes besides my own. I don't know; maybe I'm overdoing it. . ."

"Nah. . . anything that gives you a competitive edge is *per se* good."

"You know, last year I heard the professor got pissed at the class one day when everyone was gone, and he gave stuff directly relevant to the exam! That's why I copied the notes."

"Damn. I'm glad I never miss any classes."

Well, you can imagine my reaction to all of this. If Flash Gordon and Emperor Ming had sat down and started talking about Mars, I would not have been more amazed. Competitive edge? *Per se* good? These two sounded like casualties from the Twilight Zone. I even suspected a put-on, but they seemed too serious. These people were genuine Nerds.

Their conversation continued in the same vein for several minutes, at which point I settled my bill and effected a hasty departure. The episode remained with me, however, and a day or so later I related it to a friend and asked him if he thought the 1L's were nerdier than usual.

"I think they are," he responded. "It's hard to compare, but the 1L's this year seem to be working harder than before. They seem really straight too; they don't smoke cigarettes or abuse drugs like we did. God, some of them even eat yogurt!" He shook his head balefully at this last eccentricity.

My curiosity persisted, and over the course of the next month or so I asked several people around the school for an opinion on the present first-year class. There was no pol-

(Continued on Next Page)

Close Encounter of Nerd Kind: Are 1L's from Another Planet?

(Continued from Page 15)

ling precision of any kind, and most of the responses were anecdotal, but a surprising number thought that the present class was nerdier than others. This included some of the library staff, who are in the best position of all to judge such things.

If the present class is indeed a notch higher on the nerd scale, then there are several possible explanations. To begin with, the Law School overadmitted for this particular class, and then actively encouraged incoming students to take a deferred admission. The natural consequence was that the people most inclined toward taking a year off, and presumably least inclined toward becoming nerds, were self-selected out of this year's batch. Equally important is the temper of the times, which in recent years has slid to a 1950's style Ozzie-and-Harriet/Ike-the-Golfer-President vapidness. Students are disinclined to challenge the institutional norms of the university: the most recent student protest was last year when the students at the Business School petitioned the Dean because Harvard had "fallen" behind Stanford in a ranking of graduate schools. All's quiet on the lectern front.

In the late 1960's — what a strange watershed that period was! — life at the Law School was a bit more *lively*, to say the least. Uncle Sam was grabbing about one

hundred 1L's per semester, offering two-year clerkships in Southeast Asia. You can believe *those* classes didn't worry about grades!

Recently, I talked to a Law School graduate, class of '70, who told me some anecdotes of the period. Classes were a joke; a professor might as well try using the Socratic Method on a chain gang. One day, Clark Byse — yes, Crusty Clark — stopped class and lectured on the importance of taking the law *seriously*. My informant paraphrased Byse as saying something like, "I've seen classes that disliked me, or were bored, but I've never seen a class that didn't *care*." Imagine that speech happening today: one of the nerds would probably ask if it was going to be on the exam.

Well, 1L grades came out last week. Predictably, a few were delighted, more were disappointed, and almost everyone was baffled by the process. Soon, if this class runs true to form, the 1L's will loosen up and rejoin the human race. A group of 1L's recently organized a party in the Root Room of the library, bringing in a stereo and some beer. This event seems to adumbrate great things.

In short, the present first-year class has a lot of promise, and they will go far if they don't make law review.



Socratic Discussion

(Continued from Page 4)

year," says Miller. "You've gone through trial by fire and they just can't do it to you anymore. Especially if you've worked at a law firm between first and second year and you've been treated like an intelligent human being."

By third year, says Delanty, "many people have withdrawn into their own psychological backbench." Others are prepared but don't raise their hands "because of peer pressure. A lot of the people who talk are such turkeys you don't want to be identified with them."

McBreen says her favorite classes in terms of teaching method are ones where the professor gives advance warning to certain students to be prepared to discuss particular cases later in the week. "I like the advance warning and when you're up to second and third year I think you're entitled to that," she says. "What's the point of calling on someone who's not prepared? It just wastes time."

Wasteful

For Post, the Socratic method is often "big and unwieldy. Sometimes you don't get called on when you do have something to say (and raise your hand); and sometimes you get called on when you don't have anything to say. It's a waste. Ought to be the other way around."

"The Law School is intellectually stimulating," wrote Duncan Kennedy in 1970. "When you have been competing in deadly earnest since the age of ten, submitting constantly to your own fear of the teacher's disapproval, accepting your own status as a non-person, there is a point at which *no* amount of intellectual interest will overcome your fear and revulsion at the spectacle of the professor smiling quietly to himself as he prepares to lay your guts out on the floor yet once again, paternally."



SECOND CLASS POSTAGE
PAID AT BOSTON, MA

RETURN ADDRESS:

HARVARD LAW RECORD
HARVARD LAW SCHOOL
CAMBRIDGE, MA 02138